

BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING A MANAGEMENT OVERSIGHT SYSTEM FOR
BERNALILLO COUNTY DETENTION FACILITIES.**

WHEREAS, this division is enacted under the authority of NMSA 1978, §§ 3-17-1, 4-37-1, 33-3-1 and, 33-3-4 and this ordinance shall be known as the Detention Facility Oversight Ordinance; and,

WHEREAS, the Bernalillo County Commission, as the governing body of this County, has the duty to operate and inspect the overall conditions of its Jails and Detention Facilities under NMSA 1978 §§ 33-3-1 and 33-3-4; and,

WHEREAS, the complexity and demands of operating a facility for maintaining custody of arrested inmates facing criminal charges and convicted inmates, in the largest County in the State of New Mexico, requires more sophisticated and effective oversight than annual Commission site visits as currently provided by State Statute; and,

WHEREAS, Bernalillo County has been defending allegations of operating an inadequate, unconstitutional detention facility since 1995 at great expense and burden to the citizens of Bernalillo County, ;and,

WHEREAS, the federal case of McClendon v. City of Albuquerque, et al, USDC No. CIV 95-0024 has remained unresolved for almost twenty years despite the best efforts of the County,; and,

WHEREAS, the federal court has ordered that the Detention Center must remain under the operational capacity of 1,950 inmates; and,

WHEREAS, the Bernalillo County Commission has a constitutional duty to operate the MDC in a manner that creates a safe environment for inmates while the detention facility keeps the public and the county employees in the facility protected; and,

WHEREAS, the Detention Facility Oversight Ordinance will provide a tool for the Bernalillo County Commission to ensure that its responsibility of oversight of detention facilities is met and it shall read as follows:

Sec. 1. Short Title.

This Ordinance shall be known and may be cited as the 'Detention Facility Oversight Ordinance.'

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Sec. 2. Purpose and Intent.

(a) It is the purpose of this Ordinance to create a system of oversight to ensure that county adult detention facilities operate in accordance with nationally recognized best practices for jail operations and limit the population of adult detention facilities at a capacity that is safe and secure.

(b) This Ordinance is promulgated pursuant to the County's authority under the New Mexico Constitution and statutes.

(c) Any approvals granted under this ordinance do not authorize or legalize any conduct, activity, or business that is illegal under city, county, state or federal law.

Sec. 3. Oversight.

(a) Advisory Board:

1. An Advisory Board is hereby created, in compliance with Section 2-242 of the Bernalillo County Ordinances, to replace the Public Safety Advisory Board and is designed to guide the County to operate safe and secure detention facilities that strive to meet or exceed national standards and constitutional requirements.

2. Members; The Board shall be made up of nine members, five of which shall be selected by each one of the Commission Districts and four shall be at-large members, The terms of the members shall be four years with the four at-large members terms being staggered starting with two year terms and the five district selected members starting with four year terms. The Board shall elect its own chair and vice-chair.

3. Qualifications: Each member shall have expertise in one of the following areas: jail or corrections management; law; government financial management; institutional medical care; behavioral health; or other equally related field.

4. Duties of the Board:

(i) Ensure that the standards for detention facilities in the County protect the health, safety and welfare of Bernalillo County's citizens, staff, and the inmate population;

(ii) Review and study the data from the detention facilities compliance program and ACA compliance requirements;

(iii) In reviewing reports provided to the Board by the County detention facilities, if a majority of the Board finds that the response to an incident or an investigation by the County detention facility is inadequate, they may authorize audits or investigations to be conducted by an independent investigative firm for possible non-compliance with operational, ACA or Prison Rape Elimination Act (PREA)

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standards, potential violations of use of force policies or potential failures to meet best practices;

(iv) Any firms hired to conduct independent investigations at the request of the Board shall be hired through a competitive bid process.

(v) Work with the county jail experts required under paragraph (b) below; and detention facility management to solve issues discovered; and report to the County Commission at a minimum of annually concurrently with the jail experts hired by the manager;

(vi) The Board shall act in an advisory capacity to oversee operations of the County detention facilities and to make recommendations to the County Manager and County Commission in order to guide policy in order to ensure best practices and the most efficient operation of these facilities;

(vii) Deliver educational updates, including the regularly produced reports involving detention facility challenges and accomplishments through a formal stakeholder and public outreach program;

(viii) The Board shall meet at least once per quarter:

(ix) The Board shall adopt rules and regulations for the procedure by which they may authorize audits or investigations noted above in subsection (iii). All authorized audits or investigations shall be forwarded upon completion to the County Manager for appropriate action. The Board shall also receive a copy of any audits or investigations for informational purposes and in furtherance of their advisory role in making recommendations to process improvement as noted in section (vi). The Board shall have no authority to recommend discipline for any County staff member as this authority is dictated by the County Personnel Rules and any applicable Collective Bargaining Agreements.

(x) All meetings of the Board shall be subject to the requirements of the New Mexico Open Meetings Act, Section 10-15-1 et seq. NMSA 1978.

5. PerDiem: Subject to appropriations by the County Commission, each Board member shall be allowed a per diem reimbursement for each meeting they attend in an amount not to exceed the amount allowed in the New Mexico Per Diem and Mileage Act, Section 10-8-1 et seq. NMSA 1978.

6. Board Staff and Reports: The chief administrator of the Metropolitan Detention Center shall provide the staff necessary to support the Board. The chief administrator of the Metropolitan Detention Center or his or her designee shall attend all meetings of the Board and present a report at each Board meeting on the status of the County's detention facilities. This report shall, at a minimum, contain a report of all cases of alleged excessive force or staff misconduct and any cases of alleged failure to provide medical care that have occurred since the last Board meeting. The reports shall include all

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1 allegations and disposition of the allegations of acts listed in this paragraph whether in
2 the form of inmate grievances, law enforcement reports, lawsuits or any other formal or
3 informal reports.

4 (b) The County Manager shall contract with independent experts in the operation of jails and
5 detention facilities. The independent jail experts shall work with the Advisory Board to provide
6 regular independent oversight of Bernalillo County adult detention facilities to ensure that the
7 county is following or exceeding nationally recognized best practices. During the period that the
8 federal court orders the County to hire experts those three experts shall fulfill this requirement.

9
10 1. At a minimum, the experts shall provide oversight of jail operations, health care and
11 mental health care.

12 2. The experts will visit County Detention facilities at a minimum on a quarterly basis
13 and make themselves available to county management and the Advisory Board to address
14 concerns, obtain feedback and make recommendations on problems or concerns with operations,
15 healthcare and mental healthcare.

16
17 **Sec. 4. Reporting.**

18
19 (a) The independent oversight experts shall prepare written reports for the County Manager and
20 the Advisory Board in January of each year so that any recommendations and observations may
21 be reviewed prior to the preparation of the next County budget. The County Manager may ask
22 for more frequent reports as necessary for appropriate oversight and management.

23
24 (b) The County Manager and the Advisory Board shall submit the experts' reports to the
25 Commission at the second regular meeting in January for review.

26
27 **Sec. 5. Population.**

28
29 (a) The population of inmates in detention facilities directly correlates with the ability to operate
30 a safe and efficient facility.

31
32 (b) To achieve a safe and efficient operation of the County's statutorily required jail function, the
33 County Manager is hereby mandated to limit the population of adult detention facilities to the
34 inmate operational capacity a facility can constitutionally accommodate.

35
36 (c) In 2015, the Metropolitan Detention Center is the sole County Jail. The design capacity of
37 the Detention Center is 2,236 inmates and the operational capacity is currently 1950 inmates, as
38 determined by the federal court.

39
40 (d) The County Manager is required to maintain detention centers at their operational capacity
41 through all reasonable means necessary including but not limited to: community custody;
42 alternative programs for the housing, rehabilitation, medical care or drug treatment of inmates;
43 and the housing of inmates at other detention facilities outside of the County; and to the extent

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1 allowed by statute or court order, release or reassign inmates based on their mental or medical
2 condition.
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4 (e) The County shall continue to work with its criminal justice partners to strive to make the
5 criminal justice system more efficient and timely while protecting the public from those inmates
6 charged that present a risk to the community. For those inmates who present a lesser risk, the
7 County Manager may continue the Emergency Release Agreement in place with the District and
8 Metropolitan Courts and continue to make efforts to seek all available means to only jail those
9 individuals who meet constitutional requirements for incarceration.
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11 **Sec. 6. Strategic Plan for Detention Facilities and Alternative Programs.**
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13 The County Manager shall establish a Strategic Plan to systematically manage the County
14 function of providing jails and detention facilities. The Plan shall engage all of the parties
15 involved in handling the criminal justice system within the County in order to best meet the
16 needs of the citizens of Bernalillo County. The first plan shall be prepared and presented to the
17 Commission one year from the date this Ordinance takes effect. The plan shall be updated every
18 five years thereafter.
19

20 **Sec. 7. Funding of Detention Facilities and the Criminal Justice System.**
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22 The County Manager is directed to engage all of the parties involved in handling the criminal
23 justice system within the County to determine what financial resources identified in the strategic
24 planning process are available and how those resources can best be utilized. The County
25 Manager shall seek to partner with these entities through agreements to provide the best system
26 of processing criminal cases so as to properly manage the jail population and protect the public at
27 the most reasonable cost possible.
28

29 **Sec. 8. Repeal and Replacement of the Public Safety Advisory Board.**
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31 Through the passage of this Ordinance the Commission repeals the creation of the Public Safety
32 Advisory board and replaces it with the Advisory Board hereby created.
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34 **Sec. 9. Severability Clause.**
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36 If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason
37 held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall
38 not affect the validity of the remaining provisions of this Ordinance. The Commission hereby
39 declares that it would have passed this Ordinance and each section, paragraph, sentence, clause,
40 word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise
41 invalid.
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DONE this _____ day of _____, 2015.

APPROVED AS TO FORM

BOARD OF COUNTY COMMISSIONERS

Randy M. Autio, County Attorney

Maggie Hart Stebbins, Chair

Art De La Cruz, Vice Chair

Debbie O'Malley, Member

ATTEST:

Lonnie C. Talbert, Member

Maggie Toulouse Oliver, County Clerk

Wayne A. Johnson, Member